

No. 524, S.]

[Published July 21, 1949.

CHAPTER 487.

AN ACT to repeal and recreate 100.05 (1) and 100.06 and to create 20.60 (7) and 100.05 (1m) of the statutes, relating to dairy products dealer's licenses, and to security required from operators of dairy plants and dealers in dairy products in certain cases, and making an appropriation.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 20.60 (7) of the statutes is created to read:

20.60 (7) Annually, beginning July 1, 1949, \$18,500 for the investigation and supervision of the financial condition of licensed dairy plants and dairy product dealers for the protection of producers as provided in section 100.06.

SECTION 2. 100.05 (1) of the statutes is repealed and recreated to read:

100.05 (1) No person, as principal or as agent of another, shall purchase, assemble or receive any dairy products for manufacturing, processing or sale from any dairy plant operator in this state purchasing milk from producers without an annual license from the department; but no such license shall be required to carry on any of the following operations:

(a) The purchase of dairy products by a person operating only a retail shop, store or route or an established restaurant or hotel, exclusively for consumption therein or for sale directly to the consumer, and persons licensed under section 97.05.

(b) The transporting of milk or cream from the producer to any dairy plant licensed under sections 97.04 or 97.05, or the transporting of the by-products of any such plant back to the producer.

SECTION 3. 100.05 (1m) of the statutes is created to read:

100.05 (1m) The license certificate or a certified copy thereof shall be displayed conspicuously in each plant, warehouse or assembly unit operated by such dealer. The department shall issue certified copies of such license for \$1.

SECTION 4. 100.06 of the statutes is repealed and recreated to read:

100.06 DAIRY LICENSES; FINANCIAL CONDITION. (1) (a) No person shall operate a dairy plant or receiving station, as defined in section 97.04, and no license therefor shall be issued unless he shall have first satisfied the department that his financial condition is such as to reasonably assure prompt payment to the producers for the milk and cream to be received by him as and when the same becomes due and payable; but the provisions of this paragraph shall not apply to any assembler of milk or manufacturer of milk products not actually buying milk or cream and not handling the proceeds from the sale of the product manufactured or assembled if such proceeds are made payable to and distributed by a banking institution.

(b) No person shall engage in business as a dairy products dealer, as defined in section 100.05, and no license therefor shall be issued unless he shall have first satisfied the department that his financial condition is such as to reasonably assure the prompt payment to dairy plant operating suppliers for milk products to be received by him as and when the same becomes due and payable.

(c) The department shall require the applicant to file a verified statement of his business operations and financial condition. The licensee, during the term of his license, may be required to file such statements periodically. All such statements shall be confidential and shall not be open for public inspection. The department may require such statements to be certified by a public accountant. Such statements and audits, when made by the department, shall be paid for at cost.

(2) In all cases where it appears that the financial condition of the applicant or of the licensee is not adequate to reasonably assure payment when due for the milk, cream or dairy products to be purchased or received by him, the department may require:

(a) The filing of a bond or other security acceptable to the department in an amount not to exceed the sum reasonably likely to be due and accrued at any one time for such milk, cream or dairy products, which bond or security shall be payable to the department for the benefit of the persons who would otherwise suffer by reason of the default of the licensee in the payment for such milk, cream or dairy products.

(b) The filing of an agreement providing for the complete control over all manufactured or processed milk and dairy products by a trustee to be selected at least annually by the producers. Such trustee shall make and file a trustee's bond and contracts signed by the operator and the purchaser of the dairy products requiring that payment for all such products sold be made to him as trustee. Such trustee shall maintain a separate bank account for that purpose and shall at least annually render a true and correct account of his dealings to the department and to the producers.

(c) That the licensee shall receive no milk or cream on credit after the fifth day of any month unless at least 90 per cent of the value of the milk or cream delivered during the first 15 days of the preceding month shall have been paid, nor after the twentieth day of any month unless the value of all of the milk or cream delivered during the previous month shall have been paid in full; provided that when payment is based on the value of Swiss cheese manufactured from the milk or cream so delivered, an extension of 2 months during which the product is held for curing shall be allowed if the manufactured product is the property of the producers or if the proceeds from the sale thereof are made payable to and distributed by a banking institution.

(3) (a) All dairy plant operators shall inform producers delivering milk and cream of the financial basis on which the license was issued including the type and amount of security, if any, filed under this section by statement in writing to each producer patron at least once every 6 months.

(b) No person shall receive milk, cream or dairy products which will increase the amount due and accrued from him beyond the amount represented as a basis for the issuance of a license without first notifying the department.

(4) Any person injured by the breach of any obligation under this section may file with the department a verified proof of claim. Upon receipt of such claim or any other evidence of default, the department, by order, may require all interested creditors to file their verified proofs of claim before a certain date or be barred from participating in any recovery made by the department. Notice of the entry of such order shall be given by posting a copy thereof on the premises described in the license and by publication once a week for 3 successive weeks in a newspaper having general circulation in the community. The date of posting and the date of last publication shall not be less than 30 days prior to the last date for the filing of such claims. The department shall make the necessary audit and by order allow or disallow all claims presented. Notice of allowance or disallowance and request for the payment within 30 days of the claims allowed shall be sent to the principal and surety by registered mail. The department may demand, collect, and receive from the licensee or the trustee, or from the surety or sureties of either of them, the amount determined to be necessary to satisfy such claims. It may commence an action for that purpose in the circuit court of the county in which the licensed plant is located. Upon receipt of the money to be applied to the satisfaction of such claims as provided in this section, the department shall make distribution to the claimants in accordance with the order allowing claims, in full or pro rata, as the case may be. No claims for the purchase price of any milk, cream or dairy products the value of which was due and payable more than 30 days prior to the date the first written notice of default is received by the department, nor claims covering transactions wherein the seller has granted to the licensee any voluntary extension of credit, shall be allowed or paid under this section.

(5) When any dairy plant or receiving station shall employ or retain a sales agent or commission dealer to market and distribute its dairy products, and such sales agent or commission dealer shall sell such dairy products to a duly licensed dairy products dealer, such dairy products dealer shall directly remit or transmit all moneys due thereunder to such dairy plant operator or to the trustee thereof, as the case may be. The dairy plant or receiving station shall be responsible for the payment of any commission or salary that may be due to such sales agent or commission dealer. Such payment by the dairy products dealer shall be considered as in full release, payment and discharge of any obligation thereunder.

(6) Compliance with this section shall be an additional requirement for the license

and noncompliance shall be ground for denial, suspension or revocation of license, under sections 97.04 and 100.05. Section 97.04 (9), (10) and (11) shall apply to this section.

(7) The whole claim of any person against any licensee under sections 97.04 or 100.05 on account of milk, cream or dairy products sold or delivered to such licensee and any judgment therefor shall be entitled to the same preference in any insolvency or other creditor's proceedings as is given by any law of this state to claims for labor. One claim may be filed for any number of producers and when so filed the preference shall be allowed on the amount due each producer. Such preference shall also be given in bankruptcy proceedings to the extent permitted by the federal law. This section shall not affect or impair any other lien, security or priority for said claim or judgment.

(8) Nothing in this section shall be construed to apply to the sale of milk, cream or dairy products in interstate commerce to an out-of-state plant operator or dealer not licensed under this section. The protection to producers afforded by this section shall be available to the producers of any state selling milk or cream to any dairy plant licensed in this state.

Approved July 18, 1949.
